

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.119/2014

Order Reserved on: 01.06.2016
Order pronounced on 03.06.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri Shekhar Agarwal, Member (A)

Krishan Murari Gupta
S/o Sh. Brij Kishor Gupta
R/o C-29, Sultanpur Colony near Masjid
New Delhi – 110 030. ... Applicant

(By Advocate:Shri Rajat Agnihotri)

Versus

National Council of Educational Research and Training
Through its Secretary
Sir Aurobindo Marg
New Delhi – 110 016. ... Respondent

(By Advocate: Ms. Deepa Rai)

O R D E R

By V. Ajay Kumar, Member (J):

Seeking a declaration that the applicant is entitled to be governed by the GPF cum Pension Scheme as envisaged by Annexure A3-Office Memorandum dated 01.05.1987, the present OA has been filed.

2. Brief facts of case, as narrated in the OA, are that on the recommendation of the Selection Committee the applicant was selected and appointed as Lecturer in Education in the respondent-National Council of Education Research & Training (in short, NCERT), vide Order dated 22.09.1997, w.e.f. 03.09.1977. On the recommendations of the 4th Central Pay Commission (in short, 4th CPC), the Government of India introduced the Pension Scheme vide Annexure A3-Office Memorandum dated 01.05.1987 and the last date for exercising option for the Pension Scheme was 30.09.1987, and the applicant, at that time, exercised option for continuing his post retirement benefits under the CPF Scheme. By an order dated 17.01.1992, the applicant was appointed as Reader under the CAS Scheme.

3. In pursuance of an Advertisement issued by the respondents-NCERT for appointment of Professors by way of direct recruitment, the applicant had applied and on his selection was appointed as such vide Order dated 24.01.2003. Thereafter, the applicant vide his representation dated 17.12.2003, requested the respondents-NCERT for treating him to be covered by the GPF cum Pension Scheme instead of the CPF Scheme, however, the said representations were rejected.

4. When some of the persons who are identically placed like the applicant, filed OAs seeking identical relief, and when those OAs were dismissed, they preferred WP(C) No.8489/2011 (**A.P.Verma v.**

NCERT) and WP(C) No.8491/2011 (**A.K.Sacheti v. NCERT**). The Hon'ble High Court of Delhi by its Judgement dated 25.02.2013, after examining the provisions of the Pension Scheme, and the fact that the respondents-NCERT considered the identical request of one Shri M.Chandra, allowed the said WPs as under:

“10. In the present case, it is observed that the said Ms M.Chandra had opted for the CPF scheme in her erstwhile organization as well as in 1991 when she was absorbed in the services of the respondent NCERT. This is evident from the document appended at page 188 of the present petition. In this regard the respondent after obtaining the approval of the Ministry of Human Resource Development vide letter No.F.1-47/2006-Sch.4 dated 09.04.2007 on the representation of the said Ms. Chandra permitted her to exercise the option to switch over from CPF to GPF/Pension scheme on two earlier occasions. It is also observed that in the case of the said Ms Pushplata Verma, the incumbent was also governed by the CPF scheme while in her erstwhile department and had been permitted by the appointment letter issued to her to get the benefit of pension-cum-gratuity as per the rules of the Council.

11. In the present case, it is observed that in the backdrop of the aforesaid facts, deeming the petitioners be governed by CPF scheme even when it was not in vogue and presuming service conditions of their last service to be applicable upon them, has resulted in a wholly anomalous situation.

12. In view of the fact that the respondent NCERT has permitted similarly placed appointees to switch over to the GPF scheme after being selected through the same recruitment process, a legitimate expectation is raised in favour of the petitioners to be treated in a similar manner. The expectation is further accentuated when the said appointees were permitted to derive the benefit of GPF scheme despite having exercised the option of CPF scheme even after they were absorbed in the service of the respondent NCERT.

13. Therefore, when similarly placed employees of the respondent have been extended the benefit, it would be unreasonable and improper to deny to the petitioners the benefit of the GPF/Pension scheme merely because they were earlier engaged in the service of the respondent NCERT. In this behalf we must observe that the petitioners had been put on probation for a period of two years subsequent upon their appointment to the relevant post in PSSCIVE, Bhopal. The Tribunal failed to appreciate that it is settled law that once a person is appointed to a substantive post through direct recruitment in an open selection after competing with internal and external candidates the appointment on the said post is a fresh appointment. Therefore, in our opinion, the petitioners have been subjected to hostile discrimination, although they were appointed by the same recruitment procedure as others, only because they were working with one of the establishments of the respondent earlier. In our view the

same constitutes unequal treatment amongst equals and is violative of Article 14 of the Constitution of India.

14. We, accordingly, allow the writ petitions and set aside the order of the Tribunal. Consequently, the respondents are directed to extend all the benefits of the GPF/Pension Scheme after making necessary deductions to both the petitioners. No costs."

5. The Special Leave to Appeal C No.39272-39273 of 2013 was dismissed by the Hon'ble Apex Court by its order dated 05.09.2014.

6. Heard Shri Rajat Agnihotri, the learned counsel for the applicant and Ms. Deepa Rai, the learned counsel for the respondents, and perused the pleadings on record.

7. We have carefully perused the Judgement of the Hon'ble High Court of Delhi as upheld by the Hon'ble Apex Court and found that the facts and issues involved in this OA are squarely covered by the said decision.

8. In the said decision of the Hon'ble High Court, the Petitioners therein were originally appointed in lower posts and exercised their option for continuing with the post retirement benefit under the CPF Scheme even after the GPF cum Pension Scheme was introduced. They were later appointed as Professors on direct recruitment method and when they sought for changing from CPF Scheme to the GPF cum Pension Scheme, the same was rejected and the Hon'ble High Court allowed the WPs as indicated above.

9. In the circumstances and for parity of reasons, the OA is allowed and the respondents are directed to extend all the benefits of the GPF-

cum-Pension Scheme after making necessary deductions to the applicant. This exercise shall be completed within 60 days from the date of receipt of a copy of this order. No costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

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